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***De minimis* aid in agriculture and its registration in Spain. The new legislative project for the organisation of agricultural information**

1. The rules of the internal market

According to Article 107 of the Treaty on the Functioning of the European Union (TFEU), aid granted by States or through State resources, which distorts or threatens to distort competition shall be deemed incompatible with the internal market. However, aid intended to promote the economic development of areas where the standard of living is abnormally low, or provided having regard to the structural, economic and social situation in such area, shall be deemed compatible.

The Commission shall keep under constant review, together with the Member States, the aid schemes existing in those States. It shall propose to these States any appropriate measures required by the progressive development or by the functioning of the internal market.

If the Commission finds that aid granted by State or through State resources is not compatible with the internal market under Article 107, or that such aid is being misused, it shall decide that the State concerned withdraw or alter it within a period of time to be determined by the Commission, Article 108 of the TFEU.

This is the context in which so-called *de minimis* aid is regulated. In particular, the Commission has adopted a number of regulations laying

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down rules on *de minimis* aid offered in the agricultural sector, the latest of these being, for the time being, Commission Regulation EU 1408/2013, as amended by Regulation 2019/316.¹ In the light of the experience gained in the application of the above-mentioned regulation, and given the different ways in which *de minimis* aid is used in the Member States, it was appropriate to adapt some of the conditions laid down therein: thus, it was considered that the maximum amount of aid that can be granted to a single enterprise over a period of three years as well as the national ceiling on annual production should be able to be increased.

2. The exception of *de minimis* aid

In view of the increasing need to offer *de minimis* aid and given that the ceilings proved to be excessively restrictive, albeit within the exception such aid is supposed to be, it became necessary to amend EU Regulation 1408/2013 before its expiry date, i.e. 31 December 2020. For reasons of procedural economy and to ensure continuity and legal certainty, the period of application of EU Regulation 1408/2013 should be extended until 31 December 2027.

In this respect Phil Hogan, Commissioner for Agriculture and Rural Development, said: “The Commission’s proposal for new state aid rules for the agricultural sector reflects the value of this form of support in times of crisis. By increasing the maximum amount of aid, national authorities will have more flexibility and will be able to react more quickly and effectively in support of vulnerable farmers. In some cases, the amount of state aid that can be granted to individual farmers will be increased by 66%. These new rules will continue to complement the normal rules on notified state aid, which Member States will continue to be able to apply.”

As an increased need for the use of *de minimis* aid was identified in some Member States, an additional increase of both the maximum amount of aid to a single enterprise to EUR 25 000 and the national ceiling to 1.5% of annual production was authorised, subject to additional conditions necessary to ensure the proper functioning of the internal market.

The precondition for making use of the higher individual ceiling and national cap should be the application of a sectoral cap preventing Member

¹ Commission Regulation (EU) 2019/316 of 21 February 2019 amending Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector, C/2019/1310, OJ L 511.

States from granting, during any period of three fiscal years, more than 50% of the total cumulated amount of *de minimis* aid for measures benefiting only a specific product sector. That sectoral cap should ensure that any measure falling within the scope of Regulation EU 1408/2013 does not have any effect on trade between Member States and does not distort or threaten to distort competition.

3. The control of *de minimis* aid in Spain and its registration

In order to verify and monitor the level of *de minimis* aid, a central register is required in each Member State. It is optional for Member States to use a central national register to check that neither the individual ceiling for *de minimis* aid nor the national ceiling is exceeded. However, the use of a central register is mandatory in those Member States which opt for the higher individual ceiling and national cap, as the sectoral cap, which is a precondition for that option, requires an even stricter control of the aid granted. It should therefore be mandatory for such Member States to establish and maintain a central register of all *de minimis* aid given, in order to be able to verify that neither the individual ceiling nor the national or sectoral cap is exceeded.

“Where a Member State grants aid pursuant to Article 3(3a), it shall maintain a central register of small grants aid containing complete information on all small grants aid given by any authority within that Member State. Paragraph 1 shall cease to apply from the moment the register covers a period of three fiscal years,” Article 6.2 of Regulation 2019/316.

In Spain, it is the Ministry of Agriculture, the Regional Ministries of Agriculture (due to the organisation of the State by autonomous authorities or regions) and even Town Councils and Provincial Councils that can grant this type of *de minimis* aid subsidy to help farms in difficulty in their territorial area without requesting authorisation from Brussels, albeit on the basis of their own budgetary resources. Thus, agricultural associations and organisations consider it very positive that the scope for the State to support measures in the event of sectoral difficulties or crises has been extended in this way.

In Spain, rather than a register as such, a national database of public subsidies and aids has been created for this purpose, which includes a specific section for so-called *de minimis* aid.² In this database, only those public

² <https://www.pap.hacienda.gob.es/bdnstrans/GE/es/concesiones/minimis> [accessed on 3.03.2022].

administrative bodies that have registered applications or grants of subsidies in accordance with the general criteria are eligible for selection. Thus, the different ministries of the Spanish State appear as grantors, such as the Ministry of Agriculture, and other bodies, local authorities and autonomous communities. In turn, some Autonomous Communities, or the Autonomous Communities, have their own public databases of subsidies and aid, including *de minimis* aid. Those databases provide information on the beneficiary to whom the aid has been granted, the activity carried out by the beneficiary, the type of aid; whether it is a grant, loan, guarantee, financial contribution or tax advantage, and the purpose for which the aid is intended.

This will facilitate the monitoring of aid granted in order to simplify and improve the delivery and control of the *de minimis* aid.

Those databases deal with applications publicly registered in the National System of Publicised Subsidies and Public Aids. By clicking on the title (in Spanish or in a co-official language) or on the BDNS code, the data and documents of the applications may be accessed. The data include the type of awarding body, the title of the notification and the date.

In regard of the convener, only those public administration bodies that have registered applications or grants awarded as of 01/01/2016 (01/01/2014 in the case of the state public sector) are selectable.

The alert subscription service allows to create a standard alert associated with an email account, modify the alert query, or delete it. When subscribing to or modifying the subscription criteria, the system sends a message confirming the alert criteria chosen by the interested party or the administered party. Whenever there is a match between the subscription criteria and the public record of an application for proposals, an e-mail message will be sent of a wording similar to this: “the National System for the Publicity of Public Subsidies and Grants informs you that an application for proposals has been registered in accordance with the criteria associated with the given e-mail address.”

Also published in this database are the beneficiaries who have obtained grants in all the years in which this public register has been in operation.

Databases also contain information on infringements and penalties.

4. Agricultural and agri-environmental activities receiving *de minimis* aid

De minimis aid has been used to support measures for very specific purposes, for example to help prevent or eradicate animal diseases as soon as

an outbreak occurs, or to compensate farmers for damage caused by animals that are not protected by EU or national legislation, such as wild boar;³ or to support women's farming activities in rural areas or to support environmental programmes. They have also been used on occasions, as has been acknowledged, in crisis situations, in sectors such as the dairy or pig sectors, or to compensate for certain damage to plantations due to adverse weather conditions that were not covered by agricultural insurance. They have also been granted to the "green harvest"⁴ programme.

The activities that have been granted subsidies through this type of aid are all those especially related to agriculture, livestock, hunting and agro-environmental services. Recurrent subsidies include those received by associations of women farmers and stockbreeders, the Federation of Rural Women, the National Federation of Rural Women, associations of rural women, associations of rural families and women, organisations of farmers and stockbreeders of rural initiative, the confederation of rural development centres, cooperative societies of community exploitation, union of agricultural family schools, cooperatives of cattle and pigs in particular, and, of course, companies related to agri-food and agri-environmental services.

In Castilla y León, which is one of the autonomous communities in Spain with the greatest tradition and agricultural activity and one of the most intensely agricultural areas in Spain, *de minimis* aid has been granted especially to associations of farmers and livestock farmers, agricultural boards, cooperative societies and also shared ownership farms that have been developing since the adoption of the 2011 law to ensure visibility of the work of women engaged in agricultural activity.⁵ *De minimis* aid is also granted for agricultural activities, livestock farming and post-harvest preparation, as well as in the field of livestock production.

This national register, or rather, the national database of subsidies and economic aid, exceptionally in Spain, is kept for the unification of all information on national public aid and public subsidies, which brings together subsidies and aid granted by the State itself and those granted by the public administrations or other public bodies of the Autonomous Communities or local entities. Regarding all other information relating to agriculture and livestock farming, each, i.e. the 17 Autonomous Communities, have their

³ Agrodigital.com [accessed on 4.03.2022].

⁴ "Vendimia en verde," The plan for the support of the wine sector, grapevine. Royal Decree 283/2021 on green harvesting.

⁵ Law 35/2011 of October 4, 2011, on shared ownership of agricultural holdings.

own agricultural registers relating to information on the agricultural holdings that carry out their activity within that specific Community, thus representing a dysfunction in the organisation of agricultural and livestock farming activity in Spain. To this must be added the agricultural administrative registers dependent on the Ministry of Agriculture at the national level. This dispersion and fragmentation of agricultural information has a very high economic and legal cost. This peculiarity is almost unique to Spain, in contrast to other European countries with more simplified agricultural registers, or at least with more unified agricultural, livestock and agri-environmental information.

5. Particularities of the administrative agricultural registration system in Spain. Proposals for reform

One of the characteristics of the organisation of the agricultural sector in Spain is the enormous legislative fragmentation and dispersion of its agricultural administrative registers. This dispersion of information generates a legal deficiency and is a burden for the economy of this sector. The way to avoid legislative fragmentation would be to advocate the existence of a rural code, as France has. From the point of view of the problem of administrative registers, Spain also needs a critical reflection, as well as a reconstruction, of the current organisation of these administrative registers in the agricultural and livestock sector.

One proposal would be for at least part of these administrative registers related to agricultural and livestock activity to be integrated into the Commercial Register, where the entrepreneur and the activities related to his or her business dealings are registered, the interest of which requires them to be made public. In the Mercantile Register, the facts and acts relating to individual entrepreneurs and commercial companies are recorded in order to achieve this. The Spanish Mercantile Register is made up of the territorial Mercantile Registers and the Central Mercantile Register. They all report to the Ministry of Justice through the Directorate General of Registries and Notaries.

The nature of the Commercial Register and its functions would support such a proposal. Furthermore, the value of the effects resulting from the Commercial Register itself, which cannot be provided by the administrative registers, would be another reason to defend this idea, leading to a much more efficient organisation.

Another option would be that, as a minimum, the Business Register would receive the information from the administrative agricultural registers and

would be responsible for their coordination, so that any legal and economic operator, whether a private individual or a person of legal standing, entering into contracts or negotiations with any agricultural entrepreneur, or acquiring rights from them or taking part in a certain transaction, would have, through a single institution, all the information relating to that business activity. This information and security would be received through the corresponding certification or simple note from the Commercial Register.⁶

This integration and unification would mean invaluable cost and time savings for the economic operator and at company level. This would be a considerable simplification, especially in view of the enormous dispersion of agricultural administrative registers in Spain, especially due to the variety of the agricultural sector and the fact of regional distribution, as well as the difficulties in some cases arising from the lack of knowledge of the existence of many of those registers.

There are therefore many reasons for such a restructuring, on the one hand because of the economic cost of dispersing legal and property information through a multitude of administrative registers, and on the other hand to meet the requirements of administrative and legislative simplification, which are part of the principles of organisation and public interest, and which have been demanded at government level since the onset of the economic crisis in 2008.

Moreover, the new environmental obligations, which are becoming more numerous and demanding, are another reason to rationalise the organisation of agricultural administrative registers, in favour of the leading role of the business register. Both the future Common Agricultural Policy (CAP) and the European Green Deal introduce new types of agri-environmental obligations that require a more sophisticated and streamlined registry system. This is necessary to facilitate the control of compliance with these obligations, as they are not only about compliance, but also about ensuring cost-effectiveness, i.e. they are about results, and are imposed as obligations of results. These are obligations relating to environmental sustainability in connection with agricultural or agri-food business activity, which in this area represents an added value of particular economic and social importance, and which must be justified in order to obtain a series of subsidies or aid.

The principle of sustainability is an all-encompassing one, as the incorporation of environmental considerations and sustainable development is first of all mandated in Article 11 of the TFEU, which states that environmental

⁶ E. Muñoz Espada, *El Registro mercantil y la actividad agraria*, Madrid 2020.

protection requirements must be integrated into the definition and implementation of all European Union policies and activities. Likewise, Article 37 of the EU Charter of Fundamental Rights states that “a high level of environmental protection and the improvement of the quality of the environment shall be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.” Article 39 of the TFEU, which regulates the objectives of the common agricultural policy, is now to be oriented, more prominently, towards “climate and environmentally smart agriculture, reducing the impact of agriculture on the environment and climate, increasing resilience and soil health and reducing costs for farmers.”⁷ The formula seems to want to strike a balance between historical objectives, which require guaranteeing, among other objectives, sufficient food supply, with the conservation of natural resources and sustainability, but practice has shown that management has overvalued environmental measures over productivity, which is why there has been no shortage of criticism from many quarters.⁸ It must be concluded, then, that Article 39 of the TFEU and, therefore, its original objectives, are not a recommendation or a proposal to be pursued; it is an obligatory rule, like any other regulatory provision, from which the successive reforms of the CAP cannot deviate.

In any case, whatever the principle of environmental interest or sustainability at any of these levels, this requires coordination of the different data that form part of and demonstrate compliance with and performance of environmental requirements. However, the disparity and dispersion of the administrative registers of agricultural significance makes it difficult to assess them, so that only their integration into a single register, at least as information attached to the business elements, allows for a more exhaustive and complete verification. This has important repercussions not only for the purposes of shaping new governance – as is required – but above all for the economic and social consequences for the agricultural business itself.

⁷ Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “The Future of Food and Farming”, 29.11.2017, COM/2017/0713 final, p. 14.

⁸ On the lack of a rational agrifood policy vid. L. Costato, *L’agricoltura, cenerentola d’Europa*, “Rivista di Diritto Agrario” 2013, No 2, p. 213; idem, *Le conseguenze della trasformazione della PAC*, “Rivista di Diritto Agrario” 2017, No 3, p. 526 ff.; and on the seriousness of the problem can be seen O. de Schutter, *The WTO and the Post-Global Food Crisis Agenda. Putting Food Security First in the International Trade System*, November 2011 (Activity Report); moreover, A. Jannarelli, *The new food insecurity: a first systemic reading*, “Rivista di Diritto Agrario” 2010, p. 565 ff.

It is therefore the task of the lawyer to constantly review the legal categories and their structures⁹ in order to update the functions they have, to assume real economic and social utility, including readapting their very nature.

This exercise of reflection is also a way of questioning or debating the usefulness and organisation of the current instruments and of constantly calling for the rationality and coherence of the system. In this sense, the variety and dispersion of administrative registers with agricultural functions is such, or so immeasurable, that the time has come to demand from a critical point of view a new reordering under the sign of the new times of simplification, or as Guardini would say under a “responsibility in view of the emerging and increasingly disturbing internal chaos.”¹⁰

6. Future legislation on the regulation of the organisation of agricultural registries in Spain

A draft Royal Decree has recently been presented to establish and regulate the information system for agricultural and livestock farms and agricultural production. It is recognised that the agricultural Public Administrations have at their disposal a large amount of information, provided by the farmers and stockbreeders themselves, and by the companies supplying goods and equipment to the agricultural sector, in accordance with national and European Union regulations, especially in the field of plant and animal health, hygiene of primary food production, as well as agricultural by-products and waste, or in the field of production itself, as well as during the processing of subsidies to these beneficiaries, with special mention to the aid of the common agricultural policy.

Likewise, as expressed in the preamble of the aforementioned legislative project, agricultural producers are obliged to manage a series of data records (medicinal treatments, farm logbook, etc.), whose information is, in accordance with the distribution of powers in Spain, in the records and computer systems of the different competent bodies of the Autonomous Communities.

⁹ On the reconceptualization of legal categories and the method of reflection see N. Lipari, *Le categorie del diritto civile*, Milano 2013; L. Balestra, *A proposito delle categorie del diritto civile*, “Rivista Trimestrale di Diritto e Procedura Civile” 2015, No 1, p. 25 ff.; F.D. Busnelli, *Quale futuro per le categorie del diritto civile?*, “Rivista di Diritto Civile” 2015, No 1, p. 1 ff.; P. Perlingieri, *Dialogando con due filosofi, ermeneutici del diritto*, “Rassegna di Diritto Civile” 2001, No 3/4, p. 317 ff.; M. Pennasilico, *Il diritto civile tra storia e metodo*, “Rassegna di Diritto Civile” 2015, No 1, p. 337 ff.; P. Grossi, *L'avvio di un itinerario scientifico*, “Rivista di Diritto Civile” 2009, No 4, p. 365 ff.

¹⁰ R. Guardini, *Tres escritos sobre la Universidad*, Pamplona 2012, p. 64.

Therefore, further progress in harmonisation and in the creation of state-wide information networks and systems that unify such information will provide the competent administrations with unquestionable synergies in management. At the same time, it will simplify the work of agricultural producers who will have at their disposal free of charge, the necessary digital tools and processes, avoiding duplication in the sending of information to the Administrations, allowing them to keep the information or manage the records by computer and not manually.

In addition, the information that will be generated is intended to make progress in the design, execution and management of agricultural policies, especially those of promotion, with a direct impact on the CAP, in whose scope it is intended to simplify the presentation by farmers of the single annual application in which the different CAP aid lines are included, since the Administration will have all the elements of judgment needed to prepare a draft with all the data necessary for the management of the dossiers.

More broadly, harmonised information will make it possible to comply with the CAP Strategic Plan, including the monitoring of indicators and legislative and promotion measures included therein, as well as the monitoring of the commitments of the European Green Pact. This information should also allow for a better design of sectoral actions, especially to achieve an economically profitable production, but, at the same time, more respectful of the environment and the conservation of biodiversity.

In turn, all the information gathered will make it possible to obtain the necessary data for the development, preparation and dissemination of the different statistical operations contained in the National Statistical Plan and in the European Statistical Program, reducing the response burden of the informants, the costs and contributing to the more general objective of reducing administrative burdens.

The purpose of this royal decree is to establish and regulate the system of information for agricultural and livestock holdings and agricultural production (SIEX). From (among other things) the registers of agricultural exploitations of the Autonomous Communities and the Autonomous Communities, and the digital notebook of the agricultural exploitation, the provisions of this royal decree will be applied throughout the national territory.

The objectives of this new registry system are to enable the efficient planning, execution and management of the CAP 2023/2027 and to contribute to the evaluation of compliance with the Strategic Plan of the CAP 2023/2027 following the system of indicators of the new delivery model, which make up the Performance Framework of Regulation (EU) 2021/2115.

In the same way it aims to simplify the management, data provision and record keeping in farms and related businesses. It also seeks to provide information for its analysis by the Administrations, in order to guide the general and sectorial agricultural policy and to carry out the statistical operations included in the National Statistical Plan.

The system of information for agricultural and livestock holdings and agricultural production – SIEX – is configured as a set of interconnected databases and administrative records, which contain the characterisation of agricultural holdings and related companies in Spain. For these purposes, it will be interoperable with the Register of Agricultural Holdings of each autonomous community, and with the Digital Notebook of Agricultural Holdings referred to in Title III of this Royal Decree, and other public registers in the agricultural field provided for in the Third Additional Provision.

The information contained in this more unified registry will allow the consultation of updated data across the whole national territory. For this purpose, the holders of agricultural holdings and related companies will deal with the relevant authority by electronic means. However, the competent authorities of the Autonomous Communities will make available the necessary tools and services to the holders of farms that do not have access to electronic means. This will enable all to exercise their obligations and rights in relation to the provisions of this Royal Decree.

The provisions foreseen in this Royal Decree will be obligatory for holders of agricultural exploitations or related companies who seek any type of public subsidy or subsidy of loans, endorsements or guarantees, financed or co-financed by the European Union, or with national funds exclusively. This includes the contracting of agricultural insurance policies, the processing of indemnifications for reasons of animal or vegetable health or catastrophic events (drought, floods, frosts, etc.), or the obtaining of administrative concessions in the agricultural area. Likewise, for the purposes of receiving CAP aid, the competent Administration will check *ex officio* holders of agricultural holdings' compliance both with the common requirements necessary to qualify for aid and the cross-compliance rules. These are verifiable on the basis of the data provided by the holder and contained in this register, without prejudice to the subsequent verification of the veracity of such information of the rest of the requirements in this regard.

However, this option chosen by the legislator to connect agricultural administrative registries is not perfect. Although it offers greater interoperability and will improve access to information, it is not the definitive

solution required for the management of all the big data that constitutes the agricultural, livestock and environmental sector for registry purposes. Rather, the decisive solution would be determined by a single office assuming the functions – at least the coordination of all this information. This would be the Commercial Registry.¹¹

7. Conclusions

The new regulatory changes in the legislation of agricultural significance are now being addressed through more flexible public-private partnership modalities or under new forms of cooperation, and their verification is based on public data sources for analysing the monitoring of progress made. They now serve as a basis for political and investment decisions, for the imposition of sanctions, or are a guarantee of greater exchange of information and coordination, they are a means of effective and efficient control and, most importantly, a guarantee or demonstration of compliance with obligations; and for this the current organisation of the agricultural administrative registers as it is organised in Spain is of no use, so a new information system is called for, whose characteristics require a more sophisticated system that the current agricultural administrative registers cannot offer.

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¹¹ E. Muñiz Espada, *El Registro mercantil...*

Perlingieri P. (2001), *Dialogando con due filosofi, ermeneutici del diritto*, “Rassegna di Diritto Civile” No 3/4.

Schutter O. de, *The WTO and the Post-Global Food Crisis Agenda. Putting Food Security First in the International Trade System*, November 2011 (Activity Report).

DE MINIMIS AID IN AGRICULTURE AND ITS REGISTRATION IN SPAIN. THE NEW LEGISLATIVE PROJECT FOR THE ORGANISATION OF AGRICULTURAL INFORMATION

Summary

This article analyses the register and rules on the basis of which *de minimis* aid is granted in Spain. The characteristics and main types of agricultural activities that are subject to registration are characterised. The undertaking of this study was prompted by the peculiarity of administrative registers in Spain, which, by virtue of defining the rules of agricultural activity, belong to agricultural law, while these rules call for an urgent reform in order to increase their efficiency.

Keywords: *de minimis* aid, registration, agricultural big data, commercial register

AIUTI DE MINIMIS IN AGRICOLTURA E LA REGISTRAZIONE IN SPAGNA: UN NUOVO PROGETTO LEGISLATIVO RELATIVO ALL'ORGANIZZAZIONE DELL'INFORMAZIONE AGRICOLA

Riassunto

L'articolo si propone di analizzare la regolazione spagnola del registro che concerne la concessione degli aiuti *de minimis*. Sono state presentate le sue caratteristiche, nonché le principali tipologie di attività agricole soggette alla registrazione. Fare di questo registro l'oggetto di studio è dettato dalla specificità dei registri amministrativi in Spagna. Le regolazioni che li riguardano stabiliscono le regole di svolgimento dell'attività agricola. Le regole in questione fanno parte del diritto agrario e necessitano di una riforma urgente per aumentarne l'efficienza.

Parole chiave: aiuti *de minimis*, registro agricolo, big data, informazione agricola